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SUMMARY RECORD OF THE 11th MEETING

Chairman: Mr. LEHMANN (Denmark)

CONTENTS

AGENDA ITEM 148: REVIEW OF THE PROCEDURE PROVIDED FOR UNDER ARTICLE 11 OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS (continued)

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The meeting was called to order at 10.30 a.m.

AGENDA ITEM 148: REVIEW OF THE PROCEDURE PROVIDED FOR UNDER ARTICLE 11 OF THE STATUTE OF THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS (continued) (A/C.6/49/2)

1. Ms. WILLSON (United States of America) said that as provided under article 11 of the statute of the Administrative Tribunal, the Committee on Applications was authorized, under certain circumstances, to request an advisory opinion from the International Court of Justice with regard to Tribunal judgements. The scope of the Committee's review and, consequently, its usefulness in settling disputes, was limited by the specific criteria for referral to the Court. Only three out of the approximately 100 cases considered by the Committee had actually been referred to the Court.

2. The Court itself had expressed a number of concerns about the review procedure. First, the parties appearing before the Committee on Applications - Member States or the Secretariat on one side and individuals on the other - were inherently and fundamentally unequal. The former were not only litigants in the case but also decided whether there was a substantial basis for the application. The latter were permitted only minimal participation in the deliberations of the Committee, on which the Member State which was seeking review might be sitting.

3. Secondly, while not a judicial body, the Committee on Applications performed judicial functions. While the issues on which it had to pronounce were clearly legal in nature, its members did not necessarily have legal backgrounds. In addition, many members were likely to be influenced by political considerations.

4. Thirdly, the International Court of Justice was not the appropriate body to review decisions relating to United Nations personnel. In connection with the Yakimetz case, one of the Judges of the Court had noted that it was being asked to carry out functions which were wholly incompatible with its nature as the supreme judicial organ of the United Nations, whose role was to settle international disputes between States. It was often individuals who were, in fact, requesting the Court to issue advisory opinions, even though individuals did not have the locus standi necessary to appear before the Court. It was not the Court's role to retry personnel cases. Yet, it might well be obliged to respond to questions on which it had no particular competence.

5. Although it had finally, with reluctance, provided three advisory opinions with regard to Administrative Tribunal decisions, the Court had expressed marked ambivalence about its role in the review process. Indeed, it had never reversed, remanded or otherwise sought to alter or affect a decision of the Tribunal.

6. Overuse of the review process had wasted time and resources on cases, some of them frivolous, which did not properly fall within the jurisdiction of the Committee on Applications, much less that of the International Court of Justice. Furthermore, where an Administrative Tribunal decision raised significant

questions related to the Charter of the United Nations, individual States had the power to request the General Assembly to seek an advisory opinion from the Court. The Committee on Applications was an improper and unfair mechanism for the screening of such questions.

7. At issue also was whether the current system and, in particular, the procedure provided for under article 11, offered effective assistance to aggrieved employees. Because they were led to believe in the possibility of appeal, employees spent a great deal of time and energy, often working with attorneys, to prepare a case which had little chance of gaining them a further hearing and, ultimately, a reversal of the decision in question. The Committee on Applications also spent a large amount of time considering applications for review. In general, the end result was unsatisfactory to all involved.

8. Her country agreed that the Committee on Applications was, as recently pointed out by the representative of Argentina, the product of conflicts of a bygone era. It shared the view of the majority of those Governments which had expressed an opinion on the matter that the Committee should be abolished and that it should not be replaced by another mechanism. It also agreed that the existing system for settlement of staff problems needed to be reviewed in the context of the proposed changes to the internal system of justice of the United Nations, currently under review by the Fifth Committee. None of the proposed changes was inconsistent with abolishing article 11, nor would such an action adversely affect those proposals.

9. The Sixth Committee should, therefore, recommend the abolition of the Committee on Applications and should note that such a step would have no effect on the proposals currently before the Fifth Committee. Her delegation hoped that the Chairman of the Fifth Committee would keep the Sixth Committee informed of any progress in that area.

10. In adopting its resolution 49/252, the General Assembly had committed itself to strengthening the United Nations system through reform. Action to amend article 11 would be an appropriate step towards improving the efficiency of the United Nations system, which would allow the Organization to realize its full potential.

11. Mr. TARASSENKO (Russian Federation) said his delegation believed that article 11 of the statute of the Administrative Tribunal should be abolished as soon as possible since it did not contribute to the effective functioning of the system of administration of justice in the Secretariat. The procedure laid down in article 11 did not fall within the usual purview of the International Court of Justice. In view of the Court's heavy load of urgent issues arising from inter-State disputes, the use of the Court as an appellate body for decisions of the Administrative Tribunal was unjustified and inappropriate and undermined the finality of the Tribunal's decisions and its authority, while further delaying the process for the hearing of grievances, which was not in the interests of the applicants.

12. At the same time, work should continue on improving the internal system of justice in the Secretariat in order to ensure the right to a fair judicial decision through, inter alia, the possibility of establishing independent bodies

such as an office of ombudsman which would deal with potential conflicts at a preliminary stage.

13. His delegation believed that, without awaiting the outcome of consideration of the matter in the Fifth Committee, it would be possible to adopt a resolution at the current session of the General Assembly to remove article 11 from the statute of the Administrative Tribunal.

14. Mr. LONGVA (Norway) said that an internal system of justice must ensure the rights of the applicant, without being unnecessarily complex, time-consuming or expensive. In that connection, his delegation would closely assess any proposals for reform of the internal system of justice of the United Nations, including those currently under consideration by the Fifth Committee.

15. A complex and multi-stage process did not necessarily create a more equitable system. Burdensome procedures which did not provide any obvious additional guarantees were unnecessary. The review procedure provided for under article 11, which was both complex and cumbersome, should, therefore, be modified.

16. The International Court of Justice should be relieved of the burden of participating in the article 11 review procedure. The Statute of the Court did not provide for the appropriate contradictory procedure necessary for an appeals tribunal. Furthermore, it could be asked whether the administrative matters normally dealt with under the review procedure were of enough importance to warrant the involvement of the Court, which dealt primarily with disputes between States and the interpretation of international legal instruments. Naturally, Member States would wish to ensure that in making its decisions, the Administrative Tribunal did not exceed its jurisdiction or violate the principles set forth in the Charter of the United Nations. However, as noted by the Secretary-General in his report (A/C.6/49/2), there was little chance that such circumstances would arise.

17. The Committee on Applications had turned out to be a quasi-legal body which was not free from political considerations. The procedure involved appeared to be more of a burden than an asset for applicants. The Committee should be abolished, leaving the Administrative Tribunal as the final decision-maker in administrative disputes, as provided under article 10, paragraph 2, of its statute. Such modifications would not reduce the rights of the applicant. They would, in fact, improve the system by simplifying the settlement of disputes and minimizing delay and limiting expenses for all parties.

18. Ms. WONG (New Zealand) said her delegation shared the widespread view that there was good reason to abolish the review procedure provided for under article 11 of the statute of the Administrative Tribunal. At the same time, as pointed out in the Secretary-General's report (A/C.6/49/2, para. 38), in the light of the 1954 advisory opinion of the International Court of Justice, it would not be in the best interests of the United Nations to abolish completely the procedure which could allow Member States to seek an advisory opinion of the Court in cases where they had reason to believe that the Administrative Tribunal had exceeded its jurisdiction or competence or had erred on a question of law relating to the provisions of the Charter of the United Nations.

19. A useful historical review of the origins of article 11 could be found in the dissenting opinion of Judge Schwebel in the Mortished case. The Secretary-General had raised an important constitutional question relating to the role of the International Court of Justice in responding to requests for an advisory opinion. The review procedure provided for under article 11 had put to rest any doubts as to whether an advisory opinion could be sought in respect of decisions of the Administrative Tribunal. It was to be hoped that elimination of the current review procedure would not cause any of those earlier concerns to re-emerge. According to article 65 of its Statute, the Court was empowered to give an advisory opinion on any legal question, at the request of whatever body might be authorized by, or in accordance with, the Charter of the United Nations to make such a request. Abolition of the current review procedure must, therefore, be interpreted as being without prejudice to the relevant provision of the Charter. Member States would remain free to request an advisory opinion of the Court on any significant legal question, whether raised by a decision of the Administrative Tribunal or otherwise.

20. Ms. CHOKRON (Israel) said that the position of her delegation was reflected in document A/49/258. In brief, her delegation considered the review procedure provided for under article 11 of the statute of the Administrative Tribunal to be inappropriate in as much as it conferred upon a political body - the Committee on Applications - the power to render quasi-judicial decisions and to involve the International Court of Justice in matters relating to labour relations which were beyond the scope of its ordinary judicial activity. Article 11 had not in the past and was unlikely in the future to serve any useful purpose. It should be deleted from the statute.

21. Her country would give its full consideration to any proposal made or conclusion reached following consideration by the Secretary-General of matters relating to the reform of the internal system of justice of the United Nations.

22. Mr. ENAYAT (Islamic Republic of Iran) said that the Committee on Applications was not competent to act as an appeals court. Under article 11 of the statute of the Administrative Tribunal, the Committee was limited to reviewing applications submitted to it in order to determine whether a substantial basis existed for requesting an advisory opinion from the International Court of Justice.

23. His delegation had no objection to adopting a resolution calling for elimination or modification of the review procedure provided for under article 11. However, at a time when increased use was being made of the Committee on Applications, any move to abolish it would be inadvisable unless accompanied by measures to establish another, more viable and practical mechanism.

24. Some delegations had proposed that an office of ombudsman should be substituted for the Committee on Applications. In his view, such an office would be useful only in the early phases of dispute settlement, as confirmed by the Secretary-General in his report on the establishment of an office of ombudsman in the Secretariat and the streamlining of the appeals procedures (A/C.5/42/28).

25. The CHAIRMAN said that the members of the Sixth Committee appeared to agree that there was no need for the International Court of Justice to be involved in disputes involving staff members and that the review procedure provided for under article 11 should be abolished. The members of the Sixth Committee might wish to begin consultations on a draft resolution to that effect. In the meantime, he would be reporting to members on any developments in the Fifth Committee with regard to the proposed improvements in the internal system of justice of the United Nations.

The meeting rose at 11.10 a.m.